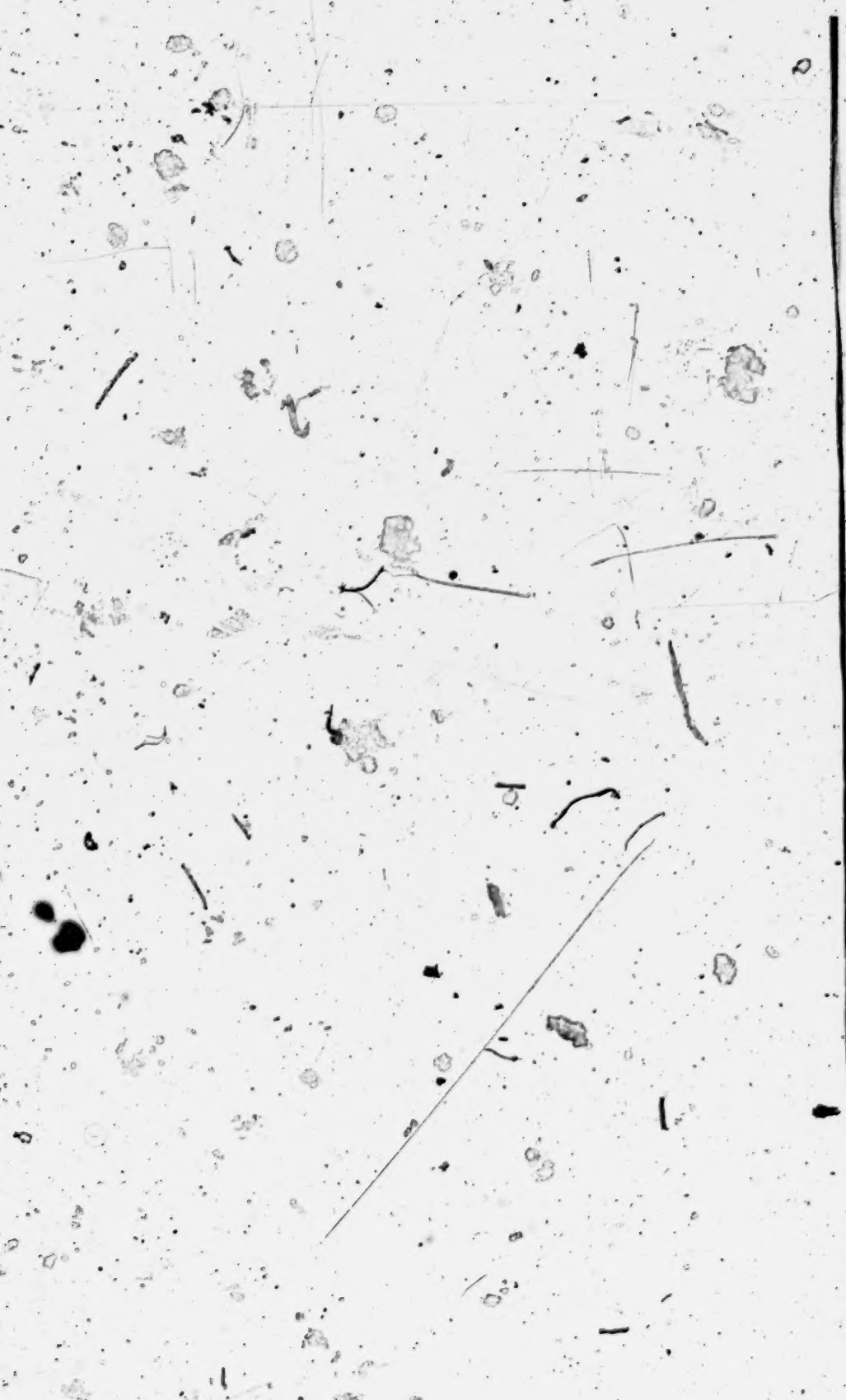


IN THE

Supreme Court of the United States

October Term, 1935.

No. 10, Original.

THE STATE OF WYOMING, *Complainant*,

vs.

THE STATE OF COLORADO, *Defendant*.

ANSWER AND RETURN OF THE DEFENDANT, THE STATE OF COLORADO.

RALPH L. CARR,
Governor of the State of Colorado,

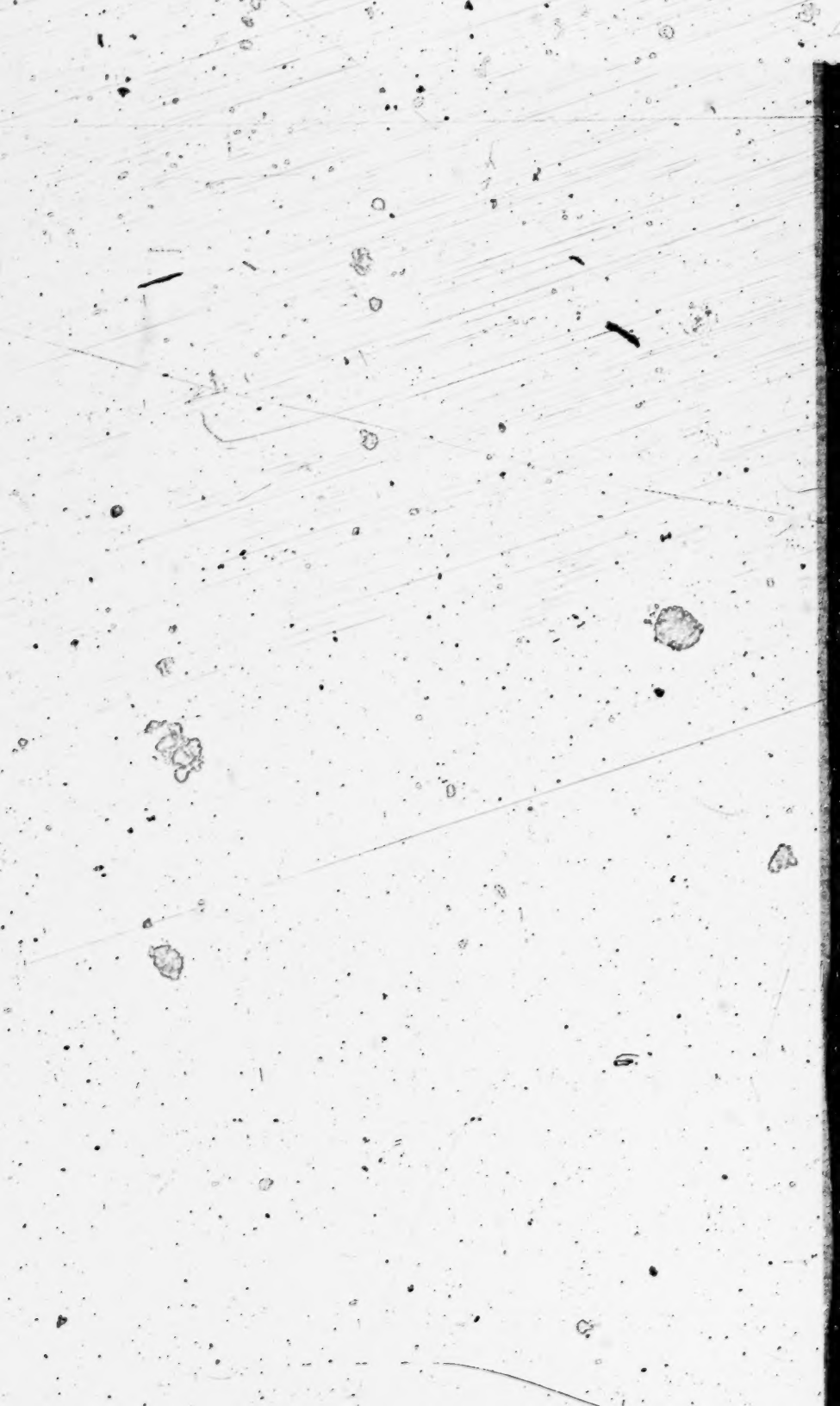
BYRON G. ROGERS,
Attorney General of the State of Colorado,

HENRY E. LUTZ,
Deputy Attorney General,

S. P. HOWELL,
Assistant Attorney General.

CLIFFORD H. STONE,
JEAN S. BREITENSTEIN,
Of Counsel.

CLARK QUICK PRINTING CO., LAWRENCE 1934-36, DENVER, COLO.



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vs.

THE STATE OF COLORADO, *Defendant.*

ANSWER AND RETURN OF THE DEFENDANT, THE STATE OF COLORADO.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the State of Colorado, defendant above named, by Byron G. Rogers, Attorney General of the State of Colorado, at the request and by the direction of Ralph L. Carr, Governor of the State of Colorado, and for its answer to the petition of the complainant and for its return to the rule to show cause issued herein on October 9, 1939, says:

I.

1. It admits each and every allegation of Paragraphs numbered "First" and "Second" of the petition.

2. It admits each and every allegation of Paragraph numbered "Third" and alleges that it was not the purpose of the decrees of this Court entered in this cause to withdraw the water claims mentioned therein from the operation of the local Colorado laws relating to their transfer or to restrict their utilization in ways not affecting Wyoming and its claimants as against Colorado and its claimants. Said decrees were intended to, and do, define the entire quantity of water which Colorado and its appropriators may divert from the Laramie River and its tributaries and thus withhold from Wyoming and its appropriators.

3. The defendant consents that the former proceedings in this cause mentioned in Paragraph "Fourth" and all other former proceedings in this cause may be considered by this Court in the consideration and determination of the petition now pending herein.

4. (a) The defendant admits each and every allegation of Paragraph numbered "Fifth." The diversions therein set out exceeded by 115.43 acre feet the amount of water, to-wit, 39,750 acre feet per annum from the Laramie River and its tributaries excluding Sand Creek, decreed by this Court to be Colorado's equitable apportionment of the stream flow. Such excess diversion was inadvertent and unintentional, and was due solely to the extreme difficulties of administering and regulating the flow of the Laramie River and its tributaries in Colorado. The region in which such diversions are made is extremely mountainous and is approximately thirty-three miles long by twelve miles wide. Many of the diversion points are located in isolated sections which are difficult to reach. The task of checking the recording devices at diversion points and assembling the data so obtained is so difficult that it is impossible to close all the headgates at the very moment when Colorado's equitable share of the stream flow has been diverted. As to such 115.53 acre feet, the defendant says that the diversion thereof was accidental, inadvertent and unintentional.

(b) The diversions set out in Paragraph numbered "Fifth" exceed the amount apportioned to Colorado in the decree of this Court dated October 9, 1922 (260 U. S. 1), in virtue of the meadowland appropriations and are less than the amounts there apportioned to said state in virtue of the transmountain diversions. This resulted from the application of the local Colorado laws under former water adjudication decrees and a decree of the District Court of Larimer County, Colorado, the proper court for the adjudication of water rights in Colorado Water District No. 48 wherein the diversions in question are made. Said decree of the Colorado District Court was entered on the 2nd day of February, 1939, in its case number 7898 in which Adelrick Benzinger was the plaintiff and The Water Supply & Storage Company et al., were the defendants. A copy of said decree, marked Exhibit "A," is attached hereto for reference and greater certainty. In said cause the plaintiff was the owner of a meadowland appropriation and sued in behalf of himself and all others similarly situated. The defendants were the owners of the transmountain diversions from the Laramie River, and the proper Colorado water administration officials. The Court there found that there were meadowland appropriations from the Laramie River in a total amount of 203.28 cubic feet of water per second of time senior and prior to any appropriation for a transmountain diversion and decreed that:

> "That the plaintiff and other meadowland appropriators and the defendant appropriators are entitled to divert and take water for irrigation from the Laramie River and its tributaries, through properly installed headgates in their respective ditches, according to their respective priorities in time and right as fixed by the adjudication decrees of this Court for Water District No. 48, until the total so diverted and taken by all such appropriators in each year shall equal in the aggregate the amount of 39,750 feet from the Laramie River and its tribu-

taries, excluding Sand Creek; and the water officials have the duty so to administer said water. Provided, in addition to the division and measurement of said waters as heretofore by cubic feet of flow per second of time, the total diversion at the headgates in acre feet is to be determined and recorded to the end that the total amount allocated to Colorado may not be exceeded. And provided further, since by the limitations now placed upon the State of Colorado no credit is given for return waters from diversions made by the meadowland appropriators in said Water District and all such return waters are lost to Colorado's allocation, the permitting of any unnecessary return to the stream of diverted and measured water shall be deemed waste and, as such, prohibited by the adjudication decrees of this Court."

5. The defendant admits each and every allegation contained in Paragraph numbered "Sixth."

6. (a) Answering Paragraph numbered "Seventh" the defendant admits that during the period from June 22 to July 11, 1939, diversions were made from the Laramie River through the ditches mentioned in addition to the diversions stated in Paragraph numbered "Fifth" of the petition of the State of Wyoming. As to whether such diversions were in the amounts stated in Paragraph numbered "Seventh," the defendant is without knowledge. Such diversions were made without the authorization, permission or consent of the water officials of the State of Colorado and resulted from a dispute arising between the meadowland appropriators and the transmountain appropriators as to the construction to be placed upon the decrees of this Court and the aforesaid decree of the Colorado District Court. Upon being advised of such diversions the Colorado water officials consulted with the various Colorado appropriators and the water officials of the State of Wyoming and after such conferences again closed the head-

gates of all ditches involved herein. Said headgates remained closed during the remainder of the 1939 irrigation season.

(b) The diversions mentioned in Paragraph numbered "Seventh" of the petition, if such diversions were in fact made, did not result in or cause the withholding from Wyoming of any portion of her equitable share of the flow of the Laramie River. By its several decrees this Court has apportioned to Colorado and its water users a total of 39,750 acre feet of water per annum; has held that it was not the purpose of its said decrees to withdraw water claims dealt with therein from the operation of local laws relating to their transfer or to restrict their utilization in ways not affecting the rights of one state and her claimants as against the other state and her claimants; and has construed its own decree by stating: "* * * it was intended to and does define and limit the quantity of water which Colorado and her appropriators may divert from the interstate stream and its tributaries and thus withhold from Wyoming and her appropriators."

By decree of the Colorado District Court hereinbefore referred to the Colorado water officials are directed and required to distribute the water and administer the water rights of the Laramie River in Colorado in accordance with decrees adjudicated in Colorado up to the time when Colorado's equitable share, as determined by this Court, is exhausted. In accordance therewith 22,527 acre feet of water was diverted by and through the Colorado meadowland ditches and 17,223 acre feet of water was exported from the Laramie River Basin by the several transmountain diversion ditches. The 17,223 acre feet of water exported from the basin, all of which water is completely lost to the stream and thus withheld from Wyoming, is a quantity 18,157 acre feet less than the 35,500 acre feet decreed by this Court for such exportations in Colorado. Of the 22,527 acre feet of water diverted by the Colorado meadowland ditches, a large portion thereof returned to the

Laramie River above the point where said river enters the State of Wyoming, and thus became available for use in Wyoming, the said portion so returned being of such amount that the quantity withheld from the stream, and thus withheld from the State of Wyoming and its water users, was less than the 4,250 acre feet of water decreed to Colorado in virtue of the said meadowland appropriations.

Upon the closing of the headgates on June 19, 1939, as alleged in the petition, the owners of water rights in and to the waters of the Laramie River in Colorado asserted that, out of the 39,750 acre feet of water allocated to Colorado, not more than 21,593 acre feet of water had been taken and withheld up to that time, and that there was a balance of 18,157 acre feet of water which was and should be available for diversion and use in Colorado. Relying upon the validity of such contention, the said Colorado appropriators, except the Wilson Supply Ditch, did open their several headgates and made additional diversions of water. The defendant alleges that the water so diverted was taken without its knowledge, approval or consent; that upon its attention being called to such actions, the said headgates were promptly and effectively closed; and that such diversions did not, in any event, deprive Wyoming and its appropriators of any of Wyoming's equitable share of the flow of the interstate stream.

7. Defendant admits that this Court entered the decree mentioned in Paragraph numbered "Eighth." Defendant alleges that it was not the purpose or intent of said decree to withdraw Colorado's equitable share of the flow of the Laramie River from the operation and control of the local Colorado laws pertaining thereto.

8. Defendant denies each and every allegation of Paragraph numbered "Ninth." Defendant alleges that the diversions made by the Colorado meadowland ditches, if such diversions were in fact made, as therein stated, did

not cause or result in the withholding from Wyoming and her appropriators of a greater amount of water than Colorado and her appropriators are permitted to withhold by the decree of this Court dated October 9, 1922 (260 U. S. 1), so construed by this Court (286 U. S. 494), wherein the Court held that its said decree was intended to and does define and limit the quantity of water which Colorado may divert and thus withhold from Wyoming.

9. Defendant denies each and every allegation of Paragraph numbered "Tenth" and alleges that in the season of 1939 Colorado and its appropriators withheld from Wyoming and its appropriators not more than 29,000 acre feet of water.

10. Answering Paragraph numbered "Eleventh," defendant admits that in the summer of 1939 the complainant asserted to the defendant that water in excess of 39,750 acre feet was being diverted in the State of Colorado from the Laramie River and requested that the necessary headgates be closed to prevent further diversions. Defendant denies that in the year 1939, or at any other time, any water in excess of Colorado's equitable share of the flow of said stream as determined by this Court has been withheld from the complainant.

11. Answering Paragraph numbered "Twelfth," defendant admits that on or about July 1, 1939, officials of the complainant and defendant met in Denver, Colorado, and discussed the administration of the flow of the Laramie River in Colorado; admits that at said time and place protests were made by officials of the complainant; denies that any excessive diversions from the Laramie River were made by the defendant, or any persons acting by, through or under the defendant; denies that the officials of the defendant admitted that the defendant had made any excessive diversions of water from said stream; denies that the officials of the defendant refused to close headgates to prevent improper diversions. Alleges that at said confer-

ence the officials of the complainant did not insist upon an immediate closing of the meadowland ditch headgates and did expressly admit that the return flow to the stream from the Colorado meadowland diversions were so great in amount that no damage or injury would result to Wyoming and its water users from such diversions. Denies each and every allegation of said paragraph not herein specifically admitted.

12. Answering Paragraph numbered "Thirteenth," the defendant admits that the protests therein mentioned were made by the complainant. Alleges that such protests then were and now are without any basis whatsoever in fact. Alleges that the defendant has not diverted, and does not intend to withhold from the complainant, any water except that within Colorado's equitable portion of the flow of the Laramie River as determined by the decrees of this Court.

13. As to the matters and things contained in the affidavits mentioned in Paragraph numbered "Fourteenth," the defendant says that it has not and cannot obtain sufficient knowledge or information on which to base a belief and therefore denies the same.

14. Answering Paragraph numbered "Fifteenth," the defendant admits that the diversions involved herein are within the borders of the State of Colorado and without the jurisdiction of the State of Wyoming; denies that the defendant, its officers, agents, servants or water claimants have unlawfully diverted water belonging to or being the property of the complainant; and denies that the complainant or her water users have suffered or will suffer any damage whatsoever in the premises.

15. Defendant denies each and every allegation of the Petition of the State of Wyoming not specifically admitted herein.

II.

AND TO FURTHER ANSWER SAID PETITION AND TO SHOW FURTHER CAUSE IN THE PREMISES:

1. (a) The defendant alleges that under the doctrine of appropriation and rule of priority that prevails in Colorado, and in the administration of water rights and the distribution of water among owners of such rights, the return to the stream of waters diverted therefrom is a most important factor which may not be disregarded either physically or legally. By its former decisions and decrees this Court has held that Colorado was entitled to export from the Laramie River and its tributaries (excluding Sand Creek) and take to another watershed a quantity of water aggregating 35,500 acre feet per annum. All of such water is wholly lost to the Laramie River Basin and none of it can return to the said stream so as to become available for diversion and use in Wyoming. By reason of the decrees of the Colorado District Court these exportations must be and are subordinated to certain of the Colorado meadowland appropriations because such meadowland appropriations, or some of them, are senior in time and prior in right. The Colorado meadowland appropriations are located wholly within the basin of the Laramie River, and diversions thus made are largely returned directly to the interstate stream, thus becoming available for diversion and use in Wyoming. Colorado is and should be entitled, in arriving at the quota of 39,750 acre feet per annum, which this Court has held it is entitled to withhold from Wyoming, to deduct the amount of the returns from the quantities diverted by the Colorado meadowland ditches, thus to arrive at the quantity withheld from Wyoming and its appropriators. Otherwise Colorado cannot attain its equitable share of the waters of the interstate stream which this Court has held it is entitled to withhold from Wyoming.

(b) The facts herein alleged relative to the return of water in virtue of the diversions made by the Colorado meadowland ditches, and as to the amount thereof in relation to the quantities diverted by the said ditches, are not in dispute, and throughout this proceeding the said facts have been, and are now, recognized and conceded by complainant, the State of Wyoming. In the original Bill of Complaint filed by the State of Wyoming herein it is alleged (page 7, Vol. 1, Transcript of Record):

> "And your orator avers that owing to the character of the said drainage basin in the said State of Colorado and the character of the soil and its underlying strata at the places where said irrigation in Colorado was accomplished, a large proportion, to-wit, more than seventy-five per cent of the waters so used within the said drainage basin in Colorado for irrigation, actually returned to the said Laramie River and its tributaries before the said stream crossed into the State of Wyoming and above the points of diversion of said water by your orator and its citizens, * * *."

(c) Defendant alleges that the amount of water which returns to the Laramie River from the diversions made by the Colorado meadowland ditches is susceptible of measurement and amounts to more than seventy-five per cent of such diversions. That since the decrees were entered in this cause Colorado, by surveys and investigations, and by the installation and operation of measuring devices, has discovered evidence which will sustain: (1) that one acre foot of water per acre is wholly insufficient to produce a crop on the native hay meadows; (2) that the return flow from meadowland irrigation can be determined with reasonable certainty. Unless such return flow is taken into consideration Colorado is deprived of its equitable share of the water of the interstate stream as defined and determined by this Court.

2. (a) The defendant says that the decisions of this Court in this cause specifically hold that the water claims of Colorado appropriators mentioned therein were not withdrawn from the operation of the local Colorado laws relating to their transfer and were not restricted in their utilization in ways not affecting Wyoming and its claimants as against Colorado and its claimants. Notwithstanding such decisions, this Court's decree of June 1, 1936, as construed by the complainant, and the Colorado transmountain appropriators, purports to enjoin Colorado and her water claimants from diverting out of the Laramie River more than 4,250 acre feet of water per annum in virtue of and through the meadowland appropriations, regardless of the seniority of priority of such meadowland appropriation under the local Colorado laws.

(b) A construction of the decrees of this Court which prevents Colorado water users from diverting from the Laramie River water to which they are entitled under the Colorado laws constitutes and is an impairment of vested property rights. The limitation of meadowland appropriators to headgate diversions of 4,250 acre feet of water per annum disregards the applicable Colorado law and the admitted physical facts that at least seventy-five per cent of the water diverted at the meadowland ditch headgates returns to the stream and is confiscatory, making the beneficial application of water for the production of crops on said land impossible and rendering said lands valueless, all in violation of Article V of the Amendments to the Constitution of the United States.

III.

The irrigation works of the Colorado transmountain appropriators, as appears from the pleadings and testimony heretofore introduced in this cause, were constructed at a great cost to carry water from the Laramie River and its tributaries to the fertile valleys of the South Platte basin in Northern Colorado. The decisions of this Court have recognized the right of Colorado to export from the Laramie River to the South Platte basin and thus withhold from the Laramie River for use in Colorado 35,500 acre feet of water. After the rendition by this Court of its decree of October 9, 1922, Colorado, and its transmountain appropriators considered that the right so to export said 35,500 acre feet of water away from the watershed of the Laramie River was vested and determined, and large sums of money were spent in improving, repairing and perfecting such transmountain appropriations. From the date of said decree of October 9, 1922, up until the entry of the decree of June 1, 1936, Colorado and its meadowland appropriators considered that the decree of October 9, 1922, was properly construed to limit the diversions for the Colorado meadowland ditches to such amounts as would result in a consumptive use and consequent withholding from Wyoming of an amount of water equal to 4,250 acre feet per annum. Such a construction of the decree of October 9, 1922, would and did result in an administration of the flow of the Laramie River in conformity with the Colorado water laws recognizing rights based upon seniority and priority. This situation has been changed by the decree of this Court dated June 1, 1936, which has been construed by the District Court of Larimer County, Colorado, as restricting Colorado's rights in virtue of the meadowland appropriations to headgate diversions of 4,250 acre feet per annum. Such a limitation upon the meadowland diversions had the effect of disturbing the relative rights of Colorado water users on the Laramie River for the reason that

4,250 acre feet of water per annum is insufficient to supply the meadowland priorities which are senior to the priorities of the transmountain appropriators. The decree of the District Court of Larimer County, Colorado, was intended to maintain the relative rights of Colorado appropriators from the Laramie River and seeks to accomplish that purpose by the taking of water from the transmountain appropriators for diversion and use by the meadowland appropriators. Such taking of water from the Colorado transmountain appropriators to satisfy the senior meadowland appropriations results in the inability of the transmountain appropriators to export from the Laramie River 35,500 acre feet of water per annum and further results in the withholding from the State of Wyoming of approximately 15,000 acre feet of water per annum instead of 39,750 acre feet of water per annum which this Court has held Colorado is entitled to withhold. In view of the foregoing, Colorado says that under the situation which has developed since the entry by this Court of its decree of June 1, 1936, Colorado and its water users are deprived of Colorado's equitable share of the flow of the stream and that more water is made available to Wyoming and its water users than that state is entitled to receive under the doctrine of equitable apportionment.

WHEREFORE, defendant prays:

1. That evidence be taken to determine the amount of return flow to the Laramie River from the diversions at the headgates of the meadowland ditches and determine the amount of water actually withheld from the State of Wyoming;

2. That Colorado be given credit for the amount of the return flow to the Laramie River from the diversions at the headgates of the Colorado meadowland ditches in the computation of the amount of water withheld by Colorado from Wyoming and its appropriators;

3. That the Petition be dismissed and the rule to show cause be discharged;

4. That the defendant have judgment for its costs;

5. That the defendant have such other and further relief as to this Court may seem proper.

RALPH L. CARR,
Governor of the State of Colorado,

BYRON G. ROGERS,
Albert P. Fischer *Attorney General of the State of Colorado,*

Robert G. Smith HENRY E. LUTZ,
Deputy Attorney General,

Lawrence R. Temple S. P. HOWELL,
Assistant Attorney General.

CLIFFORD H. STONE,
JEAN S. BREITENSTEIN,
Of Counsel.

STATE OF COLORADO, }
CITY AND COUNTY OF DENVER } ss.

BYRON G. ROGERS, of lawful age, being first duly sworn according to law, upon oath deposes and says:

That he is the Attorney General of the State of Colorado and as such, at the direction and upon the request of the Governor of said state, has prepared and read said Answer and Return to the Rule to show cause, and that the facts therein set forth, saving and excepting those averments on information and belief, are true, and that as to the facts therein alleged as upon information and belief, affiant is credibly informed and verily believes that said facts are true.

BYRON G. ROGERS.

Subscribed and sworn to before me this 12th day of January, A. D. 1940.

My commission expires July 6, 1942.

ANN G. LANDY,
Notary Public.

(Seal)

EXHIBIT "A."

STATE OF COLORADO, }
County of Larimer } ss.

IN THE DISTRICT COURT.
No. 7897.

ADELRICK BENZIGER,
Plaintiff,
vs.
THE WATER SUPPLY & STORAGE COMPANY, a corporation, THE TUNNEL WATER COMPANY, a corporation, THE DIVIDE CANAL & RESERVOIR COMPANY, a corporation, M. C. HINDERLIDER as State Engineer of the State of Colorado, and R. A. MOSIER, as Commissioner of Water District No. 48,
Defendants.

DECLARATORY JUDGMENT AND DECREE.

This cause having come on for trial to the Court on Tuesday, the 31st day of January, 1939, the plaintiff appearing in person and by his attorneys, Fancher Sarchet and J. W. Vaughn, the defendants The Water Supply & Storage Company and The Tunnel Water Company appearing by their attorneys, L. R. Temple and Albert P. Fischer, the defendant The Divide Canal & Reservoir Company appearing by Robert G. Smith, its attorney, the defendants M. C. Hinderlider as State Engineer of the State of Colorado and R. A. Mosier as Commissioner of Water District No. 48 appearing in person and by their attorneys, Byron G. Rogers, Attorney General of the State of Colorado, and Shrader P. Howell, Assistant Attorney General of the State of Colorado; and the evidence adduced by the par-

ties hereto having been concluded on the first day of February, 1939, and the Court having heard said evidence and having read and examined the exhibits introduced by said parties and having heard the arguments of counsel, which were concluded on the 2nd day of February, 1939, and the cause having been continued to this 21st day of February, 1939, for making and entry of decree, and the Court being now sufficiently advised in the premises, DOTH FIND:

I.

That the plaintiff and the defendant corporations are each appropriators of water for the purpose of irrigation out of the Laramie River and its tributaries, said river being an interstate stream which has its source in mountainous country in Larimer County, Colorado, and flows thence in a northerly direction into the State of Wyoming. That all of the territory drained by the said Laramie River and its tributaries in Colorado comprises Water District No. 48 of the State of Colorado, and appropriations of water for irrigation purposes from said river and its tributaries in Colorado and involved in this cause have heretofore been duly adjudicated and decreed by this Court in proceedings under the applicable statutes of the State of Colorado, for the adjudication of priorities to the use of water for irrigation, and that the plaintiff and the defendant corporations are the owners respectively of priorities under said decrees of dates and rate of flow as follows:

Plaintiff, Adelrick Benziger, owner of two ditch priorities: Martin No. 1 priority of date April 20, 1883, for 15.5 second feet; and Martin No. 2 Priority of date April 30, 1887, for 14.5 second feet, for irrigation of native hay meadowland owned by him in the Laramie River valley and adjacent to the Laramie River;

Defendant, The Water Supply & Storage Company, owner of Skyline Ditch priority of date August 7, 1891, for

400 second feet, for transmountain diversion to lands outside of the Laramie River watershed;

Defendant The Divide Canal & Reservoir Company, owner of Wilson Supply Ditch, priority of date June 15, 1899, for 288 second feet, for transmountain diversion to lands outside of the Laramie River watershed; and

Defendant The Tunnel Water Company, owner of the Laramie Poudre Tunnel, priority of date August 25, 1902, for approximately 250 second feet, for transmountain diversion to lands outside the Laramie River watershed.

II.

That plaintiff's said two ditch appropriations are among and included in those "certain meadowland appropriations" referred to and involved in the original actions hereinafter mentioned brought by the State of Wyoming against the State of Colorado, in the Supreme Court of the United States. And the said defendants' said several appropriations are the same appropriations referred to and involved in said original actions, and are therein referred to as, "the Skyline ditch appropriations," "the Deadman Creek appropriations," and "the Laramie-Poudre Tunnel appropriation," respectively.

III.

That there are other appropriators of water out of said Laramie River and its tributaries in said Water District No. 48 for irrigation of native hay meadowland owned by them in the Laramie River Valley in Colorado, and adjacent to said river or its tributaries; and of said other appropriators all those hereinafter in this paragraph mentioned own appropriations having priorities decreed in said Water District No. 48 of an earlier date than the said Skyline appropriation and the said appropriations of the other defendants; and all of said meadowland appropriations are among and included in those "certain meadowland appro-

priations" referred to and involved in said original actions in the Supreme Court of the United States; That in the foregoing respects said meadowland appropriators are all similarly situated to plaintiff, and plaintiff herein has brought and prosecuted this cause in his own behalf and in behalf of said other meadowland appropriators thus similarly situated. That those appropriators in whose behalf this cause is prosecuted (including plaintiff) are, and own the appropriations listed, as follows:

Name of Present Owner	Name of Ditch	Date of Appropriation	Number of Second Feet
Martin Hohnholz	Mansfield #2	6- 1-80	19.84
Clarence Oviatt	Warren	3-25-81	6.67
Emma Hohnholz	Hance	3-21-81	19.44
Clarence Oviatt	Stuck Creek	4- 1-81	16.12
G. R. Holcombe	Jim Creek	7-10-81	9
Clarence Oviatt	Bliler & Boswell (only as to that portion used in Colorado)	4- 1-82	7.04
Emma Hohnholz	Mansfield	4-20-82	11.61
R. M. Leake, Jr.	Yelton (a joint interest)	7- 1-82	30.14
Adelrick Benziger	Martin #1	4-20-83	15.5
Ralph Tatham and R. M. Leake, Jr.	La Garde	6-10-83	10.33
H. F. Piper	Ward #1	6-15-83	4.25
H. F. Piper	Ward #2	7- 1-83	9.48
R. M. Leake, Jr.	Jimmy Creek	6- 1-84	5.52
H. F. Piper	Trollope	6-15-84	6.89
Adelrick Benziger	Martin #2	4-30-87	14.50
Martin Hohnholz	Grace Creek	4- 1-88	3.07
Louis E. Sholine	Brown Ditch	5-31-90	10.
Kay H. Olson	Lamb	6- 1-90	3.88
R. M. Leake, Jr.	Jimmy Creek Ditch	5- 1-91	

IV.

That all of the irrigated lands of the said meadowland appropriators, including plaintiff, are lands in cattle ranches and are of altitude of approximately 8000 feet above sea level, and the only crop for which they are adapted is native hay; That for the proper irrigation of said lands it is necessary to keep the same wet by continuously flooding said lands for a period of approximately sixty days during each growing season, commencing about the 25th day of May of each year; that said meadowlands are situated along and adjacent to the main Laramie River or one or more of its tributaries and slope toward said river or tributary. And as heretofore applied on and to the irrigation of said meadowlands, of the waters diverted from the flow of said river system at the headgates of the several ditches under said appropriations, approximately 90% thereof has returned to the said river through percolation and surface return flow, and only the remaining approximate 10% has been actually consumed by the meadow growth and evaporation; and all of such return flow and percolation has been available to ditches having their headgates further downstream, including all appropriators from said river in the State of Wyoming. That the total water diverted during each year under the said meadowland appropriations herein before listed (and exclusive of other meadowland appropriation not herein listed, but which are included in those "certain meadowland appropriations" mentioned in the said Supreme Court actions), at the headgates of said listed ditches has been approximately 25,600 acre feet, of which approximately 90% has returned to the stream flow for the benefit of diversions lower downstream, including the State of Wyoming. And that until the situation now confronting the water users and appropriators in said Water District No. 48 arose by reason of the limitations placed upon Colorado and her appropriators of water, under the findings, opinions, and decrees of the Supreme Court of the United States hereinafter mentioned, the natural flow of said Laramie River and its tributaries

was and has been sufficient to supply all decreed priorities in said Water District No. 48.

V.

That heretofore those certain original suits involving the appropriations and use of water from said Laramie River, an interstate stream as aforesaid, were brought and prosecuted by the State of Wyoming against the State of Colorado before the Supreme Court of the United States, and the findings, opinions, and decrees of said Supreme Court are officially reported as follows, to-wit:

No. 3 original, October term, 1921, entitled The State of Wyoming v. The State of Colorado, decided June 5, 1922, officially reported in 259 U. S. at page 419 and decree reported in 259 U. S. at page 496. (Also reported in 42 S. Ct. 552 and 594; 66 L. Ed. 999.)

On October 9, 1922, a modified decree was entered in the foregoing cause which is officially reported in 260 U. S. at page 1. (Also reported in 43 S. Ct. 2; 66 L. Ed. 1026.)

No. 15 original, October Term 1931, entitled The State of Wyoming v. The State of Colorado, decided upon motion to disiniss May 31, 1932, officially reported in 286 U. S. at page 494. (Also reported in 52 S. Ct. 624; 76 L. Ed. 1245.)

No. 10 original, which is the same cause as the foregoing No. 15 original, October Term, 1935, entitled The State of Wyoming v. The State of Colorado, officially reported in 298 U. S. at page 573. (Also reported in 56 S. Ct. 912.) (And decree therein officially reported in ..... U. S. at page..... Exhibit "E" herein.)

VI.

That in and by said suits the Supreme Court of the United States found, determined, and decreed, as between the two States and their respective appropriators of water from the Laramie River and all its tributaries, excluding

Sand Creek, that by reason of prior appropriations by Colorado appropriators, in limits as to quantity of water and to dates of appropriation fixed by said Court as between the two States, that there was thereby confirmed and established:

The right of the State of Colorado, or of any one recognized by her as duly entitled thereto, to divert and take within that State a total of 39,750 acre feet in each year (and no more) in virtue of appropriations prior to Wyoming appropriations and in amounts as follows:

(1) 18,000 acre feet of water per annum from the Laramie River and its tributaries in virtue of the Skyline Ditch appropriations;

(2) 4,250 acre feet of water per annum from such stream and its tributaries in virtue of certain meadowland appropriations;

(3) 2,000 acre feet from the headwaters of Deadman Creek, a tributary of the Laramie River, through the Wilson supply ditch;

(4) 15,500 acre feet of water per annum from the Laramie River and its tributaries, in virtue of the Laramie-Poudre tunnel appropriation;

and all remaining waters of said river and its tributaries was thereby confirmed and established in the State of Wyoming and her water claimants. And by further provisions in said decrees the defendant therein, the State of Colorado, was specifically enjoined from diverting or taking any waters in excess of the confirmed rights to 15,500 acre feet and 4,250 acre feet in virtue of Laramie-Poudre Tunnel appropriation and in virtue of the meadowland appropriations, respectively, there being no showing in said suits of any exigency requiring specific injunctions against the State of Colorado respecting the other recognized and accredited diversions by the other defendant corporations herein.

VII.

That from and by reason of said suits, and the said opinions, decrees, and injunctions rendered therein by the Supreme Court of the United States, uncertainties exist and controversies have arisen between the defendants and the plaintiff and the other appropriators in whose behalf this action is brought and prosecuted: The defendant corporations and the defendant water officials contending and construing said Supreme Court decisions and decrees as modifying the adjudication decrees of this Court in the State of Colorado as pertain to said Water District No. 48, and in effect nullifying said state decrees by adjudicating amounts and priority of right as between the defendant corporations and the meadowland appropriators, irrespective of the adjudications in this Court and the priorities as decreed in this Court; and the plaintiff, for himself and others similarly situated, contending and construing said Supreme Court decisions and decrees as limiting Colorado's use of said river waters in a total allocation as between the states, and contending that the meadowland-appropriations should be first satisfied according to their priorities to the extent of such total allocation, whereby only the remaining water accredited to Colorado would be available to the defendant corporations under their junior appropriations. Wherefore, to remove such uncertainty and terminate such controversy, this Declaratory Judgment and Decree is proper and necessary to declare the status and rights of the parties hereto, and to direct a proper administration of the diversion of waters in Water District No, 48 for irrigation.

VIII.

That said defendant corporations assert the right to divert and take and unless enjoined and restrained will, if water is available, divert and take each year from the Laramie River and its tributaries a total of 35,500 acre feet of water; that the defendant The Water Supply &

Storage Company asserts the right to divert and take and will divert and take, unless enjoined from so doing, each year 18,000 acre feet of water; that the defendant corporation The Tunnel Water Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 15,500 acre feet of water; that the defendant The Divide Canal & Reservoir Company asserts the right to divert and take, and will divert and take, unless enjoined from so doing, each year 2,000 acre feet of water; that the defendant M. C. Hinderlider, as State Engineer of the State of Colorado, proposes and asserts that he will, beginning in April of the present year, unless enjoined and restrained from so doing, administer the distribution of the water of the said Laramie River and its tributaries by permitting each defendant corporation to take each year the several amounts above stated, making said total of 35,500 acre feet, without regard to priorities as determined by Colorado decree; and that he will distribute only the remaining 4,250 acre feet of the total accord or mass allocation to the ranchers in said Water District, measured at the headgates; that the situation thus disclosed renders the plaintiff and said other persons similarly situated insecure in their rights, will lead to a multiplicity of suits, and there is no adequate remedy at law in the premises, and this is a proper case for injunction.

The Court Doth Further Find and Declare:

IX.

That said original suits in the Supreme Court of the United States were of nature between the two states, and the decisions therein were intended to, and did, determine only the relative rights of the two states to divert and take the waters of the Laramie River and its tributaries; and the question of priority in time and right of the appropriations were therein dealt with and resolved and decreed only as between the two states; and it was not the purpose of said suits or of the opinions and decrees entered therein

to withdraw said appropriations and water claims from the operation of the local laws of Colorado, or to restrict their utilization in any way not affecting the rights of the State of Wyoming and her water claimants. That the fixing therein of the meadowland appropriations and enjoining any diversion and taking in excess thereof in virtue of such appropriations was and is, and was intended to be, only as between the two states, and not an adjudication or re-adjudication of the relative rights of the owners of the decreed appropriations in said Water District No. 48 in the State of Colorado; and that the relative rights of all of the owners of all of said decreed appropriations in the State of Colorado as to priority in time and right—and amount, so long as the aggregate of water diverted does not exceed the total of 39,750 acre feet accredited to Colorado appropriations, exclusive of diversions from Sand Creek or its tributaries—are subject to the constitution and laws of the State of Colorado and to the decrees heretofore entered in this Court in adjudication proceedings for said Water District No. 48.

X.

That the plaintiff and other meadowland appropriators and the defendant appropriators are entitled to divert and take water for irrigation from the Laramie River and its tributaries, through properly installed headgates in their respective ditches, according to their respective priorities in time and right as fixed by the adjudication decrees of this Court for Water District No. 48, until the total so diverted and taken by all such appropriators in each year shall equal in the aggregate the amount of 39,750 acre feet from the Laramie River and its tributaries, excluding Sand Creek; and the water officials have the duty so to administer said water. Provided, in addition to the division and measurement of said waters as heretofore by cubic feet of flow per second of time, the total diversion at the headgates in acre feet is to be determined and recorded to the end that the total amount allocated to Colorado may not

be exceeded. And provided further, since by the limitations now placed upon the State of Colorado no credit is given for return waters from diversions made by the meadowland appropriators in said Water District and all such return waters are lost to Colorado's allocation, the permitting of any unnecessary return to the stream of diverted and measured water shall be deemed waste and, as such, prohibited by the adjudication decrees of this Court.

It is Therefore Ordered and Decreed:

That in the administration of the distribution of water of the Laramie River and its tributaries in Water District No. 48 in the State of Colorado, the parties hereto shall proceed in accordance with the foregoing findings, declarations, and directions and in conformity with the Constitution and laws of the State of Colorado, under the decrees of this Court pertaining to said Water District No. 48 and upon the recognized practice of administration applied to all streams in Colorado, whereby each ditch be permitted to divert each day under its decree in accordance with date of priority. When 39,750 acre feet of water have been diverted by all the decrees exclusive of those from Sand Creek and its tributaries, all headgates are to be closed for the balance of the season.

It is further ordered, adjudged, and decreed that in the administration of the distribution of water under the decreed priorities of said Water District No. 48, all of said opinions and decrees of the Supreme Court of the United States shall be considered together and as a total limitation and mass allocation to Colorado of 39,750 acre feet annually from the waters of said river and its tributaries, exclusive of Sand Creek, and that the amount taken and distributed any year shall be measured and shall not exceed such total of 39,750 acre feet measured at the headgates, so long as said limitation continues to exist.

It is further ordered, adjudged, and decreed that the plaintiff appropriators and said defendant corporations and each of them is enjoined and restrained from taking water from said river and its tributaries excepting as herein limited and directed; and that the defendant M. C. Hinderlider, as State Engineer of the State of Colorado and all of his subordinate officers, including the defendant R. A. Mosier as Water Commissioner of said District No. 48, be and that each of them is hereby enjoined and restrained from administering the distribution of water in said Water District No. 48 otherwise than as herein directed and decreed.

It is further ordered, adjudged, and decreed that the defendant corporations herein pay the costs herein taxed and to be taxed.

Done in open court this 21st day of February, 1939, as of date February 2, 1939.

By the Court:

Claude C. Coffin, Judge.